

MONTANA LEGISLATIVE HISTORY

Chapter 458 19 85

Bill H _____ S 55 Original bill & history _____ C

H. Committee on Tax _____

S. Committee on Jud _____

Hearing Date(s) 3/20 _____ C

Hearing Date(s) 1/24 _____ C

_____ C

2/06 _____ C

_____ C

_____ C

_____ C

_____ C

Date Out _____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

CHAIRMAN--TOWE, TOM

NORMAL SCHEDULE==> SITE: ROOM 413/415

DAYS: M-TU-W-TH-F

TIME: 8:00-10:00 A.M.

SECRETARY-AAGENES, NANCY

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0042	1/07	1/08	1/12	PASS AS AMENDED		1/12
TOWE, THOMAS E.			INDIVIDUAL INCOME TAX NET OPERATING LOSS DEDUCTION			
SB0043	1/07	1/11	1/11 1/18 1/22	DO PASS		1/22
TOWE, THOMAS E.			SMALL BUSINESS CORP INCOME; INCLUDE IN MONT. INCOME PORTION THAT ESCAPES TAX			
SB0044	1/07	1/08		DO PASS		1/11
TOWE, THOMAS E.			INCOME TAX; NONRESIDENT INTEREST ON INSTALLMENT SALE OF BUSINESS PROPERTY			
SB0046	1/07	1/10		DO PASS		1/11
TOWE, THOMAS E.			RAISE TAX THRESHOLD FOR SPECIAL FUEL USERS QUARTERLY FILING WAIVER TO \$200			
SB0047	1/07	1/08	1/12	PASS AS AMENDED		1/12
TOWE, THOMAS E.			CHANGE THE DEFINITION OF EARNED INCOME TO INCLUDE SUBCHAPTER S CORP. INCOME			
SB0048	1/10	1/15	1/15 1/16 1/17 1/19 1/20, 2/1, 2/2, 2/4, 2/6, 2/10	PASS AS AMENDED		2/6
TOWE, THOMAS E.			GEN. REVISE PROPERTY TAX CLASSIFICATION TO COMPLY WITH FED. LAW; 12 CLASSES			
SB0049	1/07	1/10	1/10 1/12 1/22	PASS AS AMENDED		1/22
BROWN, BOB			COLLECTION OF DELINQUENT TAXES AND OTHER FUNDS DUE THE STATE			
SB0051	1/07	1/10	1/10 1/12 1/22 1/23	PASS AS AMENDED		1/23
BROWN, BOB			INCREASING PENALTY FOR VIOLATION OF INCOME TAX LAW			
SB0052	1/08	1/24	1/25	TABLED		1/26
CRIPPEN, BRUCE D.			REVISING ALL-BEVERAGES LICENSE TRANSFERS AND CATERING PROVISIONS			
SB0053	1/08	1/24	1/25, 1/26	PASS AS AMENDED		1/26
CRIPPEN, BRUCE D.			WAIVER OF CATERING ENDORSEMENT AND SPECIAL PERMIT FILING REQUIREMENTS			
SB0055	1/07				JUDICIARY	
TOWE, THOMAS E.			LIMITING TIME TO CHALLENGE VALIDITY OF COUNTY'S MINERAL INTEREST - TAX DEED			

---BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES-----	COMMITTEE ACTION-----	REREFERRED TO COMM----	DATE OUT-
100	10/1/78	10/1/78	10/1/78	10/1/78	10/1/78	10/1/78

FILE NO	REFER DATE	HEARING DATE	CONCURRENCE DATE	DISPOSITION	DATE
SB0002	1/07	1/15	1/17	PASS AS AMENDED	1/18
SHAW, JAMES N. AMEND DRINKING AGE LAWS TO AGE 21 TO CONFORM TO CONSTITUTIONAL AMENDMENT					
SB0003	1/07	1/15		PASS AS AMENDED	1/17
SHAW, JAMES N. AMEND CONSTITUTION TO RAISE LEGAL DRINKING AGE TO 21					
SB0005	1/07	1/08	1/09 1/10	DO PASS	1/11
DANIELS, M.K. PRECEDENCE OF CHANGED MCA OVER REDUNDANT UNCODIFIED PROVISION OF LAW					
SB0024	1/07	1/09	1/10	DO PASS	1/11
TOWE, THOMAS E. TO CLARIFY LIMITATIONS ON STATE TRIBAL COOPERATIVE AGREEMENTS					
SB0026	1/07	1/09	1/10	PASS AS AMENDED	1/11
TOWE, THOMAS E. PERMITTING SALE OR EXCHANGE OF STATE LANDS TO MONTANA INDIAN TRIBES					
SB0027	1/07	1/10	1/16	PASS AS AMENDED	1/17
DANIELS, M.K. ORIENTATION SESSIONS AND TRAINING SESSIONS FOR DISTRICT COURT CLERKS					
SB0028	1/07	1/14 & 2/13	1/16 2/18 2/20	PASS AS AMENDED	2/18
ECK, DOROTHY EXTENDING RES. WATER RIGHTS COMPACT COMMN AND CHANGES IN WATER ADJUDICATION					
SB0030	1/07	1/08	1/10	ADVERSE REPORT	1/17
TOWE, THOMAS E. WARNING TO DRIVER WHO GETS 15 POINTS TOWARD HABITUAL TRAFFIC OFFENDER STATUS					
SB0054	1/21	Rereferred from 2nd Reading	1/28	PASS AS AMENDED	1/29
TOWE, THOMAS E. FELONY TO ABUSE, NEGLECT, OR EXPLOIT A PERSON 60 OR MORE YEARS OLD					
SB0055	1/11	1/24	2/06	PASS AS AMENDED	2/16
TOWE, THOMAS E. LIMITING TIME TO CHALLENGE VALIDITY OF COUNTY'S MINERAL INTEREST - TAX DEED					
SB0056	1/07	1/14		ADVERSE REPORT	1/16
CHRISTIAENS, B.F. CHRIS ESTABLISH ASSUMPTION OF THE RISK AS ABSOLUTE DEFENSE IN CIVIL ACTIONS					

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 24, 1985

The thirteenth meeting of the Senate Judiciary Committee was called to order at 10:10 a.m. on February 24, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 55: Senator Tom Towe, sponsor of SB 55, stated this bill attempts to correct a problem that could cost and is costing the counties millions of dollars. Tax titles have proved to be defective. Because of a state statute, a royalty interest was retained when property was sold. Most went through a quiet title action. However, the county was not able to do that. The royalty interest is becoming a problem now that there is starting to be some production, because the defective titles are coming back to the county and there is some attempt by the heirs of previous owners (persons who lost their land because of failure to pay taxes back in the 1920s) to come back and say they want that royalty interest. This attempt is to try a different approach to get that interest back to the county. A royalty interest is something we can reach in a different manner by the statute of limitations five years from the time the production starts and treat it as personal property and terminate it as far as the 1920s owners are concerned. Senator Towe stated that on page 3, lines 2-3, the words "or mineral" should be deleted regarding sale by the county of land that is received by tax deed. This is not any different than a statute of limitations in any other type of action.

PROPOSERS: Judge A. B. Coate, District Judge from the Sixteenth Judicial District, spoke in support of SB 55 (see witness sheet and written testimony attached as Exhibit 1). Ed McCaffree, County Commissioner from Rosebud County, spoke in support of the bill (see witness sheet attached as Exhibit 2). Mr. McCaffree stated in his county in the last few years, they have settled or lost \$905,000 while they have cases pending which could cost them nearly \$3 million. He thinks it is time for something to be done. If people have a right to these royalties, they have an obligation to come forth and claim them. Gordon Morris, Executive Director of the Montana Association of Counties, appeared in support of the bill. He testified that MACO has introduced a House Joint Resolution this session that proposes to request an interim study of this issue from the standpoint of the problems of the irregularities of the delinquent tax procedures utilized by the counties. As far as

the bill, he has one proposed change. (See proposed amendment attached as Exhibit 3.) From the perspective of MACO, we do need a legitimate statute of limitations by way of the tests it is going to be put to in a court of law. The statute of limitations does not toll until five years from the time production commences rather than from the date of the tax sale. MACO requests a do pass recommendation with consideration of the amendment. Jim McCann, Roosevelt County Attorney, testified in support of the bill. He stated others have covered the factual situation. One thing he wants to point out is that in Rosebud County since the King case, the actions have been quite promptly presented to the counties. These actions are commenced within months of the time of production; they are not waiting years. A five-year statute of limitations encourages actions and encourages the oil companies to set up an escrow account and hold all of the moneys. His main objection to the bill is the specific language in that it doesn't become active until the production is there. Judge Coate is waiting until it becomes personalty and then using the same statute of limitations for other personal property. We are talking about millions of dollars. In their case, it is \$7-8 million that is being threatened at this time. The problem has been before the legislature a number of times. He thinks that the amendment offered by MACO has merit, and if it's properly phrased, rather than waiting to treat these royalty payments as personalty after they come into existence after they are already there, they are not coming under the redemption statutes. If they were, they would have to pay all of the taxes that were accrued at the time of the action and interest, and it would be a terrible encumbrance upon them, and they won't do it. If they only have to wait until the moneys are there, then they will do it. If people are allowed to sleep on their rights for 50-60 years and then wait while the royalties accumulate, there is something wrong with the system. The matter is of an extreme technical nature; it will take a lot of work. It should be carried over as a priority item for the interim and brought up next time.

OPPONENTS: None.

OTHER TESTIMONY: John Schontz, representing Richland County, testified regarding SB 55. He was not sure if he were opposing or supporting it, but he wanted to thank Judge Coate for bringing the issue to the legislature. He raised potentially another solution to the problem. Richland County just completed two cases in district court. One case is being appealed to the Montana Supreme Court. The rationale used is that all of the old claims (including the royalty interests) became null and void. He believes this issue is a classic one for an interim study. He asked that the committee look at the decisions of the Seventh District Court. Their county attorney would be providing them with a written brief and is available to talk on the phone.

QUESTIONS FROM THE COMMITTEE: Senator Shaw asked Judge Coate why the district court has ruled all of those claims are null and void, but the Supreme Court has ruled the other way. Judge Coate stated the rationale of the Supreme Court and the Ninth Circuit Court has been that if tax title deed is issued and the precise procedure has not been followed by the county, the whole procedure is void, and you cannot breathe life into a void act. Therefore, you cannot cut off any rights. He is not familiar with the cases in Richland County. He has no question that a tax deed is a new title. It is not a change in a link in an old title. Senator Crippen stated the Roosevelt County Attorney's proposal would take this one step further and you would apply this to mineral interests in the ground as well as severed mineral interests. The county attorney responded that is not what he meant. This 6-1/4% royalty interest that the county has as it lies in the ground is incorporeal. He is not talking about minerals, just about that 6-1/4% royalty. Senator Galt asked Judge Coate what is the fault in the tax deed that these courts are finding. Senator Mazurek stated he has had numerous calls from county attorneys around the state, and one question they raise is the availability to the counties of equitable defenses of laches, estoppel, etc. They fear this bill will preclude them from raising these defenses in the future. Judge Coate stated the Supreme Court said in King, the county has no defenses. Senator Blaylock stated his lessens as a layman indicated an incorporeal hereditament is an interest which doesn't really exist. Judge Coate responded a corporeal hereditament is a part of real property--something tangible. An incorporeal hereditament is not tangible. The best example is rents or profits to land. They don't exist until the crop is raised. The same with royalties--there is nothing there until production. Senator Blaylock asked if the same were true with minerals. Judge Coate stated no. Senator Blaylock asked why if most cases were decided on technicalities, why strike mineral. Judge Coate stated counties must sell the property as soon as possible to get it back on the tax roles. The only interest the county has is in retained royalties because the law requires that it be retained. Senator Blaylock asked if mineral were struck leaving only the royalty interest, did Judge Coate think the courts would say that is constitutional and the counties would be safe. Judge Coate responded yes, because the legislature has a right to pass statutes of limitations and control the ownership and transfer of property. He feels this is a royalty bill, not a surface ownership bill. Senator Blaylock asked Judge Coate if the committee adopted the bill with his proposed amendment, would a study on this issue be needed. Judge Coate stated in his opinion, a study would not be needed, although he can't answer how the supreme court will rule on it. Senator Daniels asked why the counties couldn't use the tax confirmation proceedings to establish their ownership on land to quiet title. Judge Coate stated he is not suggesting that because it would be a tremendous job to determine all of the land in which the county has an interest and it would be a big job to do all

of those quiet title actions. The second reason is he would have to hear all of those cases. Senator Shaw asked if all counties that received lands under tax title, retained this 6-1/4% interest when they sold it back out. Mr. Morris stated his experience is most counties do retain that interest.

CLOSING STATEMENT: Senator Towe closed by referring to the King case and reading its conclusion. He believes there is a lot of money to be made by hunting up those heirs and telling them if you just simply file a lawsuit, you might get a million dollars. As far as defenses are concerned, they raised all of these defenses in the King case. They said there is no sleeping on their rights because the county had no rights to sleep on. There could be no adverse possession because to do so you must pay taxes, and the county doesn't pay taxes. This is to get at the royalty interest now and possibly the study can come up with a way to get at the underlying mineral interests.

Hearing on SB 55 was closed.

CONSIDERATION OF SB 105: Senator Pat Regan, sponsor of the bill, opened the hearing on SB 105 and stated this bill grew out of an interim study. The original bill was found to be too restrictive, so Joan Uda drafted some proposed amendments (Exhibit 4). In the new bill, the court must take into consideration apportioning health care costs for minor children.

PROPOSERS: Joan Uda, an attorney in Helena, testified she drafted the amendments before the committee. She had some concerns that by mentioning health insurance (this bill was to deal with a problem with medicaid) and by dealing with it this way, it might be too overbroad. She added a definition of health care costs. She believes this picks up the intent of the original bill as proposed. She changed the bill a little bit in regard to temporary orders. Pat Godbout, Administrator of the Audit and Program Compliance Division of the Department of Social and Rehabilitation Services, spoke in favor of the bill on behalf of the department. The department supports this legislation as a recommendation of the health costs study program this year. About 4% of those people have health insurance compared to 12% of the disabled and 9% of the aged. Of the people that do have coverage, about one-third of their bills are paid by that coverage. If the bill is enacted, they believe there will be some savings in the medicaid program. There is no penalty for not doing this. They do support the bill the way it has been amended. Anne Brodsky, on behalf of the Women's Lobbyist Fund, stated they support the bill and the amendments (see written testimony attached as Exhibit 5). Louise Kunz, on behalf of the Montana Low Income Coalition, stated they support this bill and its amendments (see witness sheet attached as Exhibit 6). Wilbur Rehmman, speaking on behalf of himself, appeared in support of SB 105 (see witness sheet attached as Exhibit 7).

1 MEMO

2 TO: Senate Judiciary Committee
3 SUBJECT: S.B. #55
4 FROM: A.B. Coate

5 BACKGROUND:

6 During the late 1920's and the 1930's, many landowners were
7 unable to pay their real property taxes. The counties then
8 proceeded to obtain title to the land by tax title. The land was
9 then sold to third parties by the county, as soon as there was a
10 market for it. The law, §7-8-2305 MCA, provided that when the
11 county sold the land, it must retain a 6 1/4 percent "royalty
12 interest." The third party purchasers quiet titled the land in
13 the 1940's or 1950's and cut off all interests in the property
14 except the county's royalty interest. Oil and gas has been
15 discovered on the property and the county has received payment for
16 its royalty interest.

17 PROBLEM:

18 Heirs of the original owner, who lost the land for taxes, are
19 now bringing legal actions against the county to recover the
20 county's royalty interest in the land. They have been winning and
21 counties have had to pay out millions of dollars in judgments.

22 Most of the cases have turned on a defect in the tax title
23 proceedings, e.g., no certificate showing notice of the tax title
24 proceedings, to the original owner, in the County Treasurer's office.

25 Tax proceedings are strictly construed against the taxing
26 authority, so there must be proof that each specific statutory
27 proceeding was performed according to law. If it wasn't, the
28 original owner's right of redemption is never cut off and an action
29 can be commenced at anytime.

30 No one knows whether the county officials failed to give the
31 proper notice when the proceedings were commenced or if the notice
32 was given and some subsequent county official, in a "good house-

keeping" effort, destroyed them. However, that is immaterial as even if the original taxpayer had actual notice, he would still win his lawsuit upon the failure of the county to produce the records. Lowery vs. Garfield County, (1949) 122 M. 571, 203 P.2d 478.

PROPOSED SOLUTION:

One method would be to enact an entire new procedure for the obtaining of tax title; however, that would not correct the problem that we are here concerned with. That method could avoid any future tax title problems however.

To resolve the immediate problem, Senate Bill #55 has been introduced for your consideration. The purpose of this Bill is to create a specific statute of limitations on royalty interests obtained by counties through tax titles. Our Court has held that statutes of limitations which preclude the landowner from exercising his right of redemption are unconstitutional.

In 1927 the Legislature enacted C35, L 1927, a one-year statute of limitations, to bring an action to attack the validity of tax title proceedings. Our Court held that the Legislation was unconstitutional. Small vs. Hull, (1934) 96 M 525, 535, 32 P.2d 4. In 1939, the Legislature attempted to validate existing tax titles. Our Court held that such legislation was unconstitutional. Kerr vs. Small, (1941) 112 M 490, 493, 117, P.2d 271. The Legislature in 1943 enacted C 100, Laws 1943, a short statute of limitations and the Court by a 3 to 2 decision declared the act unconstitutional. Lowery vs. Garfield County, (1949) 122 M 571, 585, 208 P.2d 478. All of those Acts were concerned with the title to land acquired by tax title.

The Bill before you is concerned solely with "royalty interest. This Bill is not concerned with the land itself or the ownership of the other 93 3/4 percent of the mineral royalty. This Bill makes no attempt to cut off the right of redemption of the original

1 owner to that portion of the land. In most cases, the counties
2 long ago - 35-40 years ago - sold the land and minerals to a third
3 party. That party, generally, brought a quiet title action and
4 ownership has been established judicially in everything other than
5 the county's royalty interest.

6 In Montana, we recognize that minerals and royalty interests
7 may be severed from the surface estate; however, unless there has
8 been a severance, the minerals and royalty go with the surface and
9 can be obtained by tax title. N.P. Ry. vs. Musselshell County,
10 74 M 81, 238 Pac. 872; Rist v. Toole County, 117 M 426, 159 P.2d
11 340, 162 ALR 406.

12 A royalty interest is not a mineral interest; it is merely a
13 right to share in production on the severance of the minerals and
14 is personalty. Thompson on Real Property, Vol. 1A, §179, P. 129.
15 Thus, it is a "rent" or "profit" arising out of a corporeal
16 interest in property, the minerals, and is an uncorporeal
17 hereditament. Op cite P. 135. When the minerals are severed from
18 the soil, they become personalty and are no longer treated as real
19 property. Op cite P. 138; also see, 22 Rocky Mountain Law
20 Review 523, "The Doctrine of Severance of Estates and the Effect
21 of Tax Titles Thereon."

22 Therefore, once production of the minerals has been commenced
23 we have personalty rather than real property. There is no legal
24 reason that the Legislature cannot enact a specific statute of
25 limitations for royalty interest. The Legislature can, and has,
26 enacted laws restricting ownership in other personalty - e.g., loss
27 personal property; estrays; unclaimed bank deposits; motor vehicle
28 registration; and etc.

29 The purpose of statute of limitations is to: prevent
30 potential plaintiffs from sitting on their rights, and to suppress
31 stale claims after the facts concerning them have become obscured
32 by lapse of time, defective memory, or death or removal of

1 witnesses.

2 Cassidy vs. Finley, 173 M 475, 568 P.2d 142.

3 This Bill does not propose to change any of the delinquent
4 taxpayers' rights of redemption. It does not set a statute of
5 limitations to tax title proceedings. It does not validate any
6 prior acts of county officials. It will not change any legal
7 proceedings filed prior to its effective date.

8 Actions for the recovery of damages, enforcement of contracts,
9 recovery of land, and even for wrongfully death have statutes of
10 limitations. Is there any logical reason why there shouldn't
11 be one for royalty interests?

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 012485

BILL NO. SB 55

MONTANA
ASSOCIATION OF
COUNTIES

1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

SENATE BILL 55

COUNTY MINERAL RIGHTS

SENATE JUDICIARY COMMITTEE

JANUARY 24, 1985

On behalf of the Montana Association of Counties the following amendment to the bill as drafted is submitted for consideration:

Section 2 (3). An action against a county to recover a royalty or mineral interest in land acquired by the county by tax deed must be brought within ~~5-years-after-the-commencement-of-commercial-production-of-oil,-gas,-or-other minerals-from-the-land-"~~ within 3 years of any tax sale. Failure to bring an action within 3 years after any tax sale shall be deemed to convey the absolute title to the lands described therein, including all the right, title, interest, estate, lien, claim, and demand of the State of Montana and of the county in and to said real estate and including the right, if said tax deed or tax sale or any of the tax proceedings upon which said deed may be based shall be attached and held irregular or void.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 012485
BILL NO. SB 55

MACo

this bill received in the House. Representative Spaeth replied 82. Senator Daniels commented he is aware the chief justice knows what the voters feel and this situation will probably not occur again. He does not think it needs a constitutional amendment to accomplish this purpose. Senator Mazurek addressed Representative Connelly and asked if this were a reaction to the judge's being recalled in one or two instances or if the judge were being called back regularly. Representative Connelly replied he was called back to hear about six cases.

CLOSING STATEMENT: Representative Spaeth stated we have to remember this goes to the vote of the people. It is not just her personal opinion; it is something the people wanted. It does seem the supreme court sometimes oversteps its authority. She feels the will of the people is being frustrated here.

Hearing on HB 106 was closed.

FURTHER CONSIDERATION OF SJR 7: Chairman Mazurek stated majority and minority reports had been prepared for SJR 7 pursuant to the request of the committee, but there has been concern from Senators Stephens and VanValkenburg about this. They would prefer the committee just send the resolution out on an adverse committee report and Senator Shaw make a motion to reconsider it to avoid two floor debates. He explained that it was Senator Shaw's and the committee's choice. There being no objection to doing this, Chairman Mazurek signed an adverse committee report which had been prepared for SJR 7.

FURTHER CONSIDERATION OF SB 55: Senator Towe stated he is satisfied Vic Cook has a reason for his distinction, but he does not believe it is very much of one. He would like the bill redrafted so it will not take away any of his rights. Senator Mazurek pointed out Mr. Cook is representing individual landowners who have received tax title, and Judge Coate is representing counties. Senator Towe stated it is still confusing, and he hasn't had the time he would like to spend on it. Chairman Mazurek agreed the committee would not take any action on it until Senator Towe has had an opportunity to review the bill further.

ACTION ON SB 185 WHICH WAS REREFERRED TO THE COMMITTEE: Senator Mazurek stated he thinks the concern was that we had gone away from a minimum amount on a small foreclosure and we left in the maximum. He stated 3% is not enough in a small action, but is too much in a big one. We need a floor and a ceiling. Senator Towe stated he would have no problem with putting the \$1,000 back in. On small tract financing, there should be no reason to go over \$1,000 in the foreclosure procedure unless there is some unusual procedure. The only other thing we could do is allow for approval by the court for unusual fees, although there

STATUS SHEET

HOUSE TAXATION

COMMITTEE

49th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
B 33	To provide for establishment of agricultural land values for the revaluation-cycle beginning Jan. 1, 1986	2-27-85	Severson	3-15-85	BE CONCURRED IN, AS AMENDED	3-29-85
B 41	To clarify the distribution of income and earnings from coal severance tax funds by providing those funds not be included in in-state investment	2-27-85	Towe	3-15-85	BE CONCURRED IN	3-15-85
B 55	To limit the time within which an action may be commenced to determine the validity of royalty or mineral interest in land acquired by tax deed	2-27-85	Towe	3-20-85	BE CONCURRED IN	3-20-85
SB 72	To exclude social security benefits from adjusted gross income in computing state income tax liability	2-27-85	Hager	3-11-85	BE CONCURRED IN	3-11-85
SB 99	To limit to the immediately previous year any back taxes owed on a motor vehicle not registered or operated	2-27-85	Lynch	3-15-85	BE CONCURRED IN	3-15-85
SB 142	To increase the fee in lieu of tax on light vehicles	2-27-85	Halligan	3-19-85	WITHOUT RECOMMENDATION	3-19-85

Taxation Committee

March 20, 1985

Page Two

Chairman Devlin asked how much money did this amount to last year.

Mr. Hammer answered that in the last three or four years, they have been dealing with \$142,513.00.

There were no further questions, Senator Pinsoneault closed and the hearing on this bill was closed.

EXECUTIVE SESSION:

DISPOSITION OF SENATE BILL 246: Representative Williams moved that this bill BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 55: Senator Towe stated that this bill deals with the separation of minerals from real property wherein the county sold the land and reserved royalty interest in the minerals. He described the defect in the law and how this bill would remedy this situation.

PROPOSERS: Judge A. B. Coate, from Forsyth, gave testimony in support of this bill. See Exhibit 1.

Edward McCaffree, from Forsyth, stated that they have lost or settled cases in Rosebud County amounting to \$905,000.00 and they have four cases pending and as of now the total loss would be in excess of \$3 million.

There were no further proposers.

OPPOSERS: There were none.

QUESTIONS ON SENATE BILL 55: Representative Williams noted that the applicability date is September 30, 1985, and he asked what would be the status of the suits that have been filed to date.

Judge Coate responded that they would not be affected.

Chairman Devlin asked about the change from five to three years that is on page 4.

Taxation Committee
March 20, 1985
Page Three

Judge Coate replied that when this bill was drafted, the Legislative Council thought that a five-year statute of limitations would be fair and he did not have any strong feelings about it.

Representative Asay asked what the difference would be if the county withheld 50% of the mineral rights as opposed to the royalty.

Judge Coate answered that it would have made no difference because the supreme court has determined that the tax title proceedings in 1920 and 1930 were invalid and usually this is because there is no record in the treasurer's office of notice being given to the land owner. He explained what happened with a lot of the land in eastern Montana was that the Northern Pacific Railroad owned it and then sold it but retained all the minerals and, in 1931, the Northern Pacific released its minerals and whoever was the title owner then got the minerals even if they had lost the land for taxes.

Representative Sands asked about the defenses.

Judge Coate responded that he thought the court will rule that all these defenses are gone and the legislature has no power to pass a bill to give these defenses some vitality and they will treat that as surplus, but that is only his opinion.

Representative Sands asked Senator Towe if he thought this was a necessary part of the bill.

Senator Towe replied that Judge Coate is exactly right and the last thing they want to do is to hurt somebody's appeal.

Representative Sands commented that it seemed to him that this was an invitation to litigation.

Senator Towe responded that the supreme court said in 1937, 1943 and 1949 that this does not have any validity no matter what the legislature says and he thinks they will do that again in 1986.

V
Taxation Committee
March 20, 1985
Page Four

There were no further questions and Senator Towe closed.
The hearing on this bill was closed.

EXECUTIVE SESSION:

DISPOSITION OF SENATE BILL 55: Representative Asay moved that this bill BE CONCURRED IN. The motion carried un-animously.

CONSIDERATION OF SENATE BILL 249: Senator Boylan, District 39, Gallatin County, stated that this was an act to tax cigarettes sold in packages of more than twenty cigarettes on a per-cigarette basis. He explained that the industry has come out with a new type packaging where there is more than twenty cigarettes to a package and this is not an increase or a decrease in the tax.

PROPOSERS: Bonnie Tippy, representing R. J. Reynolds Company, gave a statement in support of this bill. See Exhibit 2.

Tucker Hill, representing Phillip-Morris, stated that he would reiterate what Ms. Tippy said and they see no loss of revenue and they think it is a fair bill.

Jerome Anderson, representing the Tobacco Institute of the United States, testified that they support this legislation so that the tobacco industry can market in Montana the same as is done in forty-seven other states.

Jim Madison, Administrator of the Miscellaneous Tax Division of the Department of Revenue, said he appears only for information purposes and basically they do not have any problems with the additional costs.

- There were no further proponents.

OPPOSERS: There were none.

QUESTIONS ON SENATE BILL 249: Representative Williams asked why they could not tax cigarettes on a single-cigarette basis as they do in other states.

Mr. Anderson replied that the initial thought was to tax them on an individual basis, but the Department of

Exhibit 1
SB 55
3/20/85
Judge Coate

MEMO

TO: HOUSE TAXATION COMMITTEE

SUBJECT: S.B. #55

FROM: A.B. COATE

BACKGROUND:

During the late 1920's and the 1930's, many landowners were unable to pay their real property taxes. The counties then proceeded to obtain title to the land by tax title. The land was then sold to third parties by the county, as soon as there was a market for it. The law, §7-3-2305 MCA, provided that when the county sold the land, it must retain a 6 1/4 percent "royalty interest." The third party purchasers quietly titled the land in the 1940's or 1950's and cut off all interests in the property except the county's royalty interest. Oil and gas has been discovered on the property and the county has received payment for its royalty interest.

PROBLEM:

Heirs of the original owner, who lost the land for taxes, are now bringing legal actions against the county to recover the county's royalty interest in the land. They have been winning and counties have had to pay out millions of dollars in judgments.

Most of the cases have turned on a defect in the tax title proceedings, e.g., no certificate showing notice of the tax title proceedings, to the original owner, in the County Treasurer's office.

Tax proceedings are strictly construed against the taxing authority, so there must be proof that each specific statutory proceeding was performed according to law. If it wasn't, the original owner's right of redemption is never cut off and an action can be commenced at anytime.

No one knows whether the county officials failed to give the proper notice when the proceedings were commenced or if the notice was given and some subsequent county official, in a "good house-

1 keeping" effort, destroyed them. However, that is immaterial as
2 even if the original taxpayer had actual notice, he would still
3 win his lawsuit upon the failure of the county to produce the
4 records. Lowery vs. Garfield County, (1949) 122 M. 571, 208
5 P.2d 478.

6 PROPOSED SOLUTION:

7 One method would be to enact an entire new procedure for the
8 obtaining of tax title; however, that would not correct the
9 problem that we are here concerned with. That method could avoid
10 any future tax title problems however.

11 To resolve the immediate problem, Senate Bill #55 has been
12 introduced for your consideration. The purpose of this Bill is to
13 create a specific statute of limitations on royalty interests
14 obtained by counties through tax titles. Our Court has held that
15 statutes of limitations which preclude the landowner from
16 exercising his right of redemption are unconstitutional.

17 In 1927 the Legislature enacted C85, L 1927, a one-year
18 statute of limitations, to bring an action to attack the validity
19 of tax title proceedings. Our Court held that the Legislation was
20 unconstitutional. Small vs. Hull, (1934) 96 M 525, 535, 32 P.2d 4.
21 In 1939, the Legislature attempted to validate existing tax titles.
22 Our Court held that such legislation was unconstitutional.
23 Kerr vs. Small, (1941) 112 M 490, 493, 117, P.2d 271. The
24 Legislature in 1943 enacted C 100, Laws 1943, a short statute of
25 limitations and the Court by a 3 to 2 decision declared the act
26 unconstitutional. Lowery vs. Garfield County, (1949) 122 M 571,
27 585, 208 P.2d 478. All of those Acts were concerned with the
28 title to land acquired by tax title.

29 The Bill before you is concerned solely with "royalty interest"
30 This Bill is not concerned with the land itself or the ownership
31 of the other 93 3/4 percent of the mineral royalty. This Bill
32 makes no attempt to cut off the right of redemption of the original

1 owner to that portion of the land. In most cases, the counties
2 long ago - 35-40 years ago - sold the land and minerals to a third
3 party. That party, generally, brought a quiet title action and
4 ownership has been established judicially in everything other than
5 the county's royalty interest.

6 In Montana, we recognize that minerals and royalty interests
7 may be severed from the surface estate; however, unless there has
8 been a severance, the minerals and royalty go with the surface and
9 can be obtained by tax title N.P. Ry. vs. Musselshell County,
10 74 M 31, 238 Pac. 872; Rist v. Toole County, 117 M 426, 159 P.2d
11 340, 162 ALR 406.

12 A royalty interest is not a mineral interest; it is merely a
13 right to share in production on the severance of the minerals and
14 is personalty. Thompson on Real Property, Vol. 1A, §179, P. 129.
15 Thus, it is a "rent" or "profit" arising out of a corporeal
16 interest in property, the minerals, and is an incorporeal
17 hereditment. Op cite P. 135. When the minerals are severed from
18 the soil, they become personalty and are no longer treated as real
19 property. Op cite P. 138; also see, 22 Rocky Mountain Law
20 Review 523, "The Doctrine of Severance of Estates and the Effect
21 of Tax Titles Thereon."

22 Therefore, once production of the minerals has been commenced,
23 we have personalty rather than real property. There is no legal
24 reason that the Legislature cannot enact a specific statute of
25 limitations for royalty interest. The Legislature can, and has,
26 enacted laws restricting ownership in other personalty - e.g., lost
27 personal property; estrays; unclaimed bank deposits; motor vehicle
28 registration; and etc.

29 The purpose of statute of limitations is to: prevent
30 potential plaintiffs from sleeping on their rights, and to suppress
31 stale claims after the facts concerning them have become obscured
32 by lapse of time, defective memory, or death or removal of

V

1 witnesses.

2 Cassidy vs. Finlev, 173 M 475, 568 P.2d 142.

3 This Bill does not propose to change any of the delinquent
4 taxpayers' rights of redemption. It does not set a statute of
5 limitations to tax title proceedings. It does not validate any
6 prior acts of county officials. It will not change any legal
7 proceedings filed prior to its effective date.

8 Actions for the recovery of damages, enforcement of contracts,
9 recovery of land, and even for wrongfully death have statutes of
10 limitations. Is there any logical reason why there shouldn't
11 be one for royalty interests?

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

STANDING COMMITTEE REPORT

March 20, 19 35

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration SENATE Bill No. 55

third reading copy (blue color)

AN ACT LIMITING THE TIME WITHIN WHICH AN ACTION MAY BE COMMENCED TO
DETERMINE THE VALIDITY OF A ROYALTY OR MINERAL INTEREST OF A COUNTY
IN LAND ACQUIRED BY TAX DEED;

Respectfully report as follows: That SENATE Bill No. 55

BE CONCURRED IN

55-4X55